Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1975

No. 75-178

MARTIN E. GANSCHOW

Appellant

v.

MARIE D. GANSCHOW

Appellee

On Appeal From the Supreme Court of the State of California

JURISDICTIONAL STATEMENT

Fred W. Armstrong
635 Bryant Street
Palo Alto, CA 94302
Counsel for Appellant

Of Counsel:
N. Perry Moerdyke, Jr.
635 Bryant Street
Palo Alto, CA 94302

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OPINION BELOW

The opinion of the Supreme Court of the State of California is reported at 14 Cal. 3d 150, 534 Pac.2d 705 and is set forth in appendix, infra p 18-44 and the opinion of the California Court of Appeal is reported in 116 Cal.Rptr. 611 and set forth, infra pp. 45-59 The order of the trial court is set forth infra pp. 62-65

JURISDICTION

Jurisdiction of this court is invoked pursuant to 28 U.S.C. Sec. 1257(2), this being an appeal which draws into question the validity of Sec. 73, Ch. 1748, California Statutes 1971, infra p. 76. on the ground that it is repugnant to the Constitution of the United States. Jurisdiction of this court is sustained by *Cohen v. California*, 403 U.S.15(1971) *Stanton v. Stanton*, 95 S. Ct. 1373(1975) *Levy v. Louisiana*, 391 U.S. 68 (1968).

Appellee sought an order for past-due support money for her daughter, which had accrued pursuant to a divorce decree not based on contract. The order was granted by the trial court in

an order dated July 17, 1972, after finding that the statute was constitutional and that the obligation of the appellant would continue until the daughter, age 19, would finish one more year of college.

On appeal to the California Court of Appeal, the order was reversed by order of that court on October 1, 1974. Appellee's petition for hearing before the California Supreme Court was granted and that Court on May 5, 1975 entered its order affirming the order of the trial court. A timely petition for rehearing was denied on June 4, 1975. Infra pp.66-72. A timely notice of appeal was filed in the Supreme Court on June 4, 1975 and in the trial court on June 5, 1975. Infra pp.73-74.

The California Court of Appeal specifically upheld appellant's reliance upon the Fourteenth Amendment and the California Supreme Court specifically rejected appellant's reliance upon the Fourteenth Amendment. This matter is therefore appropriately brought to this court by appeal.

In the event that the court does not

consider appeal, the proper mode of review, appellant requests that the papers whereupon this appeal is taken be regarded and acted upon as a petition for writ of certiorari pursuant to 28 U.S.C. Sec. 2103.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Article 1 of the Fourteenth Amendment to the Constitution of the United States and

Sections 23 and 73, Ch. 1748 California Statutes 1971, set forth, infra pp. 76-77.

QUESTION PRESENTED

The question presented is whether a parent is denied the equal protection of the law when he must support a child until he or she reaches the age of 21 pursuant to a divorce decree rendered when the age of majority was 21 years in view of the statutory change of the age of majority to 18.

STATEMENT

Appellant and Appellee were husband and wife. On October 3, 1967, a final judgment of divorce was entered which incorporated the terms of the Interlocutory Judgment which in turn contained the following provision:

> "That Defendant (Appellant) shall pay to Plaintiff (Appellee) the sum of $100.00 per month for the support of each such child, per month, payable monthly on the 1st day of November, 1966, and continuing each month until their respective majorities, unless sooner married or self-supporting or until further Order of the Court."

The parties have two children, a daughter born September 3, 1952 and a son born January 7, 1957.

Sec. 23, Chap. 1748, California Stats. 1972 changing the age of majority to 18 became effective March 4, 1972, whereupon Appellant ceased making payments for his daughter's support.

On May 9, 1972, Appellee, Marie D. (Ganschow) Black, filed an ORDER TO SHOW CAUSE RE CONTEMPT for an order that Appellant pay $190.00 child support unpaid for March and April 1972 and

$100.00 per month as set forth in the order above, which sums had "accrued" after the daughter had become 18 years of age and after the effective date of Chapter 1748.

After arguments, the trial court on July 17, 1972 entered its order ordering Appellant to pay $490.00 in arrearages and $100.00 per month commencing September 1972, and continuing each and every month thereafter to and including the month of May 1973, provided Debbie Ganschow remained in college during said period of time. Commencing June 1973 respondent's (appellant's) obligation for child support shall terminate. The order is set forth, infra pp. 62-65.

(Other matters set forth in the support order are not included in this appeal.)

HOW FEDERAL QUESTIONS WERE RAISED AND DECIDED BELOW

Appellee's Order to Show Cause was argued orally and by brief. Appellant contended that Sec. 73, Chap. 1748, California Stats. 1971 was applied in

such a manner as to require appellant and fathers similarly situated to support adult children and to permit other fathers similarly situated, except for support orders, to escape any liability for support of their adult children in violation of the Fourteenth Amendment.

Appellee secured a hearing by the California Supreme Court which court wrote:

> "In these proceedings to enforce such an order for the support of a child who has attained the age of 18 years, we must decide whether the applicable statute contravenes constitutional requirements of equal protection of the laws insofar as it distinguishes between obligations of parents for child support solely on the basis of whether the obligation has been set forth in an order made prior to the change in the age of majority." Infra pp. 18-19.

The California Supreme Court also wrote:

> "Subjecting the statute here under attack to this rational relationship test, we encounter little difficulty in discerning a conceivable legitimate interest promoted by the provision. In reducing the age of majority from 21 to 18 years of age, the Legislature may well have been concerned with

> the effect this would have on outstanding court orders for child support entered in litigation upon the reasonable anticipation both by the parties and the court that the obligation to support would continue until the child reached 21 years of age." Infra p.34.

The California Supreme Court unanimously and expressly rejected Appellant's contention and the position of the California Court of Appeal. After noting the statutes involved, the California Supreme Court wrote:

> "In considering defendant's (appellant's) equal protection attack upon Section 25.1, we begin by determining the appropriate test to be used by this court in judging the constitutional validity of the statute. We note that the provision neither involves a suspect class nor touches upon a fundamental right. (See, E. G., *Serrano v. Priest* (1971) 5 Cal. 3d 584, 597). Rather, the interest of both parents affected by the legislation is a monetary one--the parent entitled to receive the payments on the child's behalf, seeking to enforce and continue an award for its support, the other parent obligated under a prior order to pay such support seeking to terminate his or her liability. We therefore must apply 'the basic and conventional standard for reviewing economic

and social welfare legislation in which there is a 'discrimination' or differentiation of treatment between classes or individuals. It manifests restraint by the judiciary in relation to the discretionary act of a co-equal branch of government; in so doing it invests legislation involving such differentiated treatment with a presumption of constitutionality and 'requir(es) merely that distinctions be drawn by a challenged statute bear some rational relationship to a conceivable state purpose.' (Citation) . . . Moreover, the burden of demonstrating the invalidity of a classification under this standard rests squarely upon the party who assails it.' " Infra. pp. 33-34.

THE FEDERAL QUESTION IS SUBSTANTIAL

As applied by the California Supreme Court, the California statute changing the age of minority from 21 to 18, imposes on one group of fathers the duty to support children until age 21 and excuses another group of fathers from any duty to support children over 18.

The duty to support children to age 21 is imposed on fathers who, prior to March 4, 1972 were under order of a court to provide support. All other

fathers are relieved of the support obligation when their children reach age 18.

The California Supreme Court has adopted the rule that to show discrimination in violation of the Fourteenth Amendment, the duty is on the proponent to establish that there is no "rational relationship to a conceivable state purpose." Infra, p. 34

The rule of this Court, restated in *Reed v. Reed*, 404 U.S. 71 (1971) is that

> "A classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced will be treated alike.' "

The object of the legislation was stated in the opinion of the Court of Appeal in this case to be:

> ". . . the Legislature determined in its wisdom that in the light of contemporary standards an able-bodied male or female who reaches the age of 18 years has the intelligence, experience, and capability of self-support and is entitled to be emancipated from the authority and control of its parents." Infra. pp. 51-52

This statement is buttressed by the law as it stood or as it was enacted by the 1971 California Legislature. For instance: All children under 18 years were minors. Sec. 23, Chap. 1748, Laws 1971. Children over 18 were capable of entering into contracts generally (Civil Code Sec. 1556) and marriage contracts. (Civil Code Sec. 4101(a)). Additionally, they could act as jurors. (Code of Civil Procedure, Sec. 198). Parents could only sue for the wrongful death of their minor children (Code of Civil Procedure Sec. 376). The Uniform Civil Liability For Support Act applied only to children under 18 years of age. (Civil Code Sec. 241(d)) Trial courts could issue custody and support orders concerning minors. (Civil Code Secs. 4600 and 4700) *Levy v. Levy*, 245 CA2nd 341, 53 Cal.Rptr. 790 (1966)

The California Legislature of 1971, along with some 37 other state legislatures ratified the 26th Amendment within 100 days of submission. 27th Annual C.Q. Almanac for 92d Cong. First Session, P. 475.

This partial resume supports the objective of the change of age legislation as stated by the Court of Appeal.

By inference the California Supreme Court determined that Appellant had failed to prove the negative, that there was no rational relationship proven. However, the California Supreme Court stated a possible rational basis for the legislation to be:

> ". . .the Legislature may well have been concerned with the effect this (change of age) would have on outstanding court orders for child support entered in litigation upon the reasonable anticipation both by the parties and the court that the obligation to support would continue until the child reached 21 years of age." Infra, p.34.

The "reasonable anticipation" of the parties and the court must be measured by the law as then enunciated and not yet overruled which was:

In 1937, the California Supreme Court in *Rosher v. Superior Court*, 9 Cal.2d 556 ruled that when the age of minority was changed, for a female, from 18 to 21, the father, who was under a court order of support would continue to be liable for another three years. Two

successive court orders had been made in that case neither specifically mentioning age 18. The California Supreme Court In Bank made the following comment:

> "Neither order can be said to have intended more than the making of a proper provision for the petitioner's minor daughter at the time it was made and both in the absence of words of definite limitation in time, must be construed as continuing until majority or until changed circumstances require or render proper the granting of an application for modification." pp. 560-561.

In *Rosher, Supra,* the California Supreme Court then overruled *Kendall v. Kendall,* 122 C. A. 397, 10 P. 2d 131, which held that a support judgment created a vested right, a property right, in the former age of majority.

The judgment in this case and the usual form of judgment in California provides for the termination of support not at a specified age such as 21, but at majority, possibly because of the 1937 ruling of the California Supreme Court mentioned above.

Additionally, the Court announced in *Rosher, supra,* that the legislature can

change the age of minority at any time. 9 Cal.2d 556 at 560.

The "reasonable anticipation" argument is self-serving. It is submitted that all children, all parents and all courts prior to Dec. 1970 could well have anticipated support running to the child's 21st birthday. Yet the legislature only considered the reasonable anticipation of the few. The legislative objective to put all 18 year olds on an equal basis is not served by the exception. The exception has no fair or "substantial relation to the object of the statute."

But for those who listened closely to contemporary events, there had been talk that if an 18 year old were old enough to fight, he was old enough to vote. And the State of Kentucky, at least, as early as 1965 had changed the age of minority to 18 and had held that support orders dated prior to the change were inoperative after the child reached 18. *Young v. Young* (Ky.) 413 SW 2d 887 (1967). The majority of states consider this the correct rule. Infra. p. 78.

The California Supreme Court placed its ruling in part on the concept that

> ". . . the interest of both parties affected by the legislation is a monetary one--the parent having custody of the child seeking to enforce and continue an award for its support, the other parent obligated under a prior order to pay such support seeking to terminate his or her liability." Infra. p. 33.

The statement begs the issue not only by determining that "the other parent (was) obligated under a prior order to pay."

Basically, as this Court pointed out in *Lynch v. H.F.C.*, 405 U. S. 538, the right to earnings and property are civil rights and in *Levy v. Louisiana*, 391 U. S. 72, this Court noted that it has been extremely sensitive to basic civil rights.

The interests of Mr. Ganschow on one side and Mrs. Black on the other involves the civil rights of Mr. Ganschow to his property and is not simply one parent who is "obligated" under a support order trying to avoid that obligation. The interest is whether that obligation terminated when the Legislature

changed the age of minority.

In *Stanton v. Stanton*, 95 S. Ct. 1373 (1975) one age for support of females and another age for support of males was based presumably on the age old concept that girls matured and married earlier than boys. This Court found that concept insufficient to continue the differential in ages for support, particularly noting that in other respects that differential was not recognized in Utah law. Likewise in California the differential in age exists only in the Ganschow type case.

In *Long v. Robinson*, 316 F.Supp. 22 (1970) aff'd and opinion adopted by the Fourth Circuit in 436 Fed. 2d 1116, the Legislature discriminated between 18 and 16 year olds. A 16 year old arrested in Baltimore would be tried in Juvenile Court. An 18 year old arrested outside of Baltimore would be tried in a Juvenile Court. The State's argument was that boys outside of Baltimore did not mature as rapidly as those in Baltimore. The basis for discrimination was invalidated.

Sec. 77, Chap. 1748, Stats. 1971 provides that all minors who are under disability to maintain actions have such disability removed on the effective date of Chap. 1748. Infra p. 77.
The existence of a court order makes no difference.

Again the Legislature determined that all 18 year olds were equal.

In *Stanton, supra,* the distinction was based on outmoded marriage ideas. In *Long, supra,* the distinction was based on a belief that city children were different than farm children. In this case the distinction was created on the false premise that change in age of majority statute, without Sec. 73, would be unconstitutional as impairing the obligation of a contract and a vested right to support. Infra p. 78.
In *Rosher, supra,* the vested right holding of an earlier California case was specifically overruled. Appellant again emphasizes that no contract exists in this case.

The appeal presents a decision which applies the Fourteenth Amendment contrary to the decisions of this Court and of the Fourth Circuit.

CONCLUSION

This case presents substantial questions relating to the interpretation and application of the due process and equal protection clauses of the Fourteenth Amendment. Probable jurisdiction should be noted, and the case should be given plenary consideration, with briefs on the merits and oral argument, for the resolution of those questions.

Respectfully submitted,

Fred W. Armstrong
635 Bryant Street
Palo Alto, Calif. 94302
Counsel for Appellant

N. Perry Moerdyke, Jr.
635 Bryant Street
Palo Alto, Calif. 94302
Of Counsel for Appellant

APPENDIX A

IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

IN BANK

MARIE D. GANSCHOW, Plaintiff and Respondent, v. MARTIN E. GANSCHOW, Defendant and Appellant	)	OPINION
	)	S.F. 23231

By statute effective March 4, 1972, California reduced the age of majority from 21 years to 18 years of age. This scheme of legislation also provides, among other things, that such statutory reduction of the age of majority nevertheless has no effect upon orders for child support entered prior to the effective date of the statutory change, which orders, unless otherwise modified by the appropriate court, may be continued in effect until the child attains the age of 21 years.

In these proceedings to enforce such an order for the support of a child

who has attained the age of 18 years, we must decide whether the applicable statute contravenes constitutional requirements of equal protection of the laws insofar as it distinguishes between obligations of parents for child support solely on the basis of whether the obligation has been set forth in an order entered prior to the change in the age of majority. We must determine whether there is a constitutionally permissible distinction between such court-ordered obligations for child support which may continue until the age of 21 years and all other obligations for child support which terminate at 18 years. We conclude that the distinction does not offend equal protection principles. We affirm the order appealed from.

Plaintiff and defendant were divorced in 1967. There were two children born of their marriage -- Deborah J. Ganschow, born September 3, 1952, and Martin E. Ganschow, born January 7, 1957. In the interlocutory judgment of divorce entered on January 23, 1967, the court awarded custody of the

children to plaintiff subject to reasonable visitation rights in defendant and ordered defendant to pay "to Plaintiff the sum of $100 per month for the support of each . . . child, . . . payable monthly on the 1st day of November, 1966, and continuing each month until their respective majorities, unless sooner married or self supporting, or until further Order of the Court." The above provision was incorporated by reference into the final judgment of divorce, entered on October 3, 1967.

Defendant complied with the terms of this order until March 4, 1972, when he ceased making payments for the support of Deborah, who was then 20 years old. Plaintiff thereupon instituted the instant contempt proceedings alleging that defendant's failure to make these support payments constituted a wilful violation of the terms of the divorce decree. The court issued an order to show cause re contempt. At the ensuing hearings, defendant admitted his failure to make the support payments for Deborah but asserted that his obligation had

been terminated by operation of law on March 4, 1972, the effective date of the legislation changing the age of majority from 21 years to 18 years, since Deborah was over 18 as of that date. In rejecting defendant's argument, the court relied upon the provisions exempting from the above change support orders entered prior to March 4, 1972. The court found no merit in defendant's claim that this statutory provision violates equal protection of the laws insofar as it distinguishes between child support obligations solely on the basis of whether or not they are set forth in court orders entered prior to March 4, 1972.

In its order entered on July 17, 1972, the court adjudged defendant not in contempt of court for failure to pay child support for Deborah, ordered him to pay $490 for arrearages in child support, and modified the interlocutory and final judgments of divorce to provide that defendant's support obligation to Deborah was to continue until May 1973, provided she remained in

college during the interim period.[1] Defendant appeals from the order.

Defendant contends before us, as he did below, that the statute upon which the trial court relied in refusing to terminate his support obligation violates the equal protection of the laws, as guaranteed by the Fourteenth Amendment to the United States Constitution and by article I, section 7, of the California Constitution.

We initially discuss the background of the relevant legislation. Effective March 4, 1972, the Legislature amended Civil Code section 25 to provide that "(m)inors are all persons under 18 years of age."[2] This amendment was embodied

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1. As previously stated, under the terms of the original order, defendant was required to support Deborah until she became 21 (on Sept. 3, 1973), unless she sooner married or became self-supporting, or unless otherwise ordered by the court.

2. Hereafter, unless otherwise indicated, all section references are to the Civil Code.

in section 23, chapter 1748, of the Statutes of 1971. At the same time, the Legislature modified numerous other statutory provisions to refer to the new age of majority.[3] Among the provisions so modified were those imposing parental support obligations, which would thereafter terminate as a child reached the age of 18, absent special circumstances.[4]

The controversy presented in the case at bench arises out of the fact that one statutory exception has been created to this general scheme adjusting

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3. For a list of these provisions, see chapter 1748, Statutes of 1971.

4. Section 242 provides that "(e)very man shall support his . . .child. . ." Section 243 imposes this same obligation upon women. Section 241, subdivision (d), defines "child" for purposes of these statutes to mean "a son or daughter under the age of 18 years and a son or daughter of whatever age who is incapacitated from earning a living and without sufficient means." Section 241 was amended by section 25.5 of chapter 1748 of the Statutes of 1971 (effective Mar. 4, 1972) by the substitution of the phrase "18 years" for "21 years" in the definition of "child." Thus, as of

parental liability for support to reflect the new age of majority. As part of the package of laws terminating minority at 18, the Legislature enacted a provision (Stats. 1971, ch. 1748, § 73) stating in relevant part as follows: "In any order or direction of a court entered before the operative date of this act, except orders or directions of a court affecting child support, and in the absence of any indication of an intention to the contrary, a reference to the age of majority or the age of 19

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the effective date of this legislation, a parent's legal responsibility to provide for the support of his or her offspring terminates, as a general rule, when the child attains the age of 18 years.

Furthermore, a court entering a support order after March 4, 1972, may not provide for continuation of the obligation past the new age of majority. In actions brought to annul or dissolve a marriage, the court has jurisdiction to "make such orders as are appropriate concerning . . . the custody and support of minor children of the marriage . . . ." (§ 4351, italics added; see also § 4453.) Section 4700, the basic child support statute, similarly provides in relevant part that "(i)n any proceeding where there is at issue the

years of age, 20 years of age, or 21 years of age shall be deemed to be a reference to 18 years of age.

"The use of the words the age of majority, 19 years of age, 20 years of age, or 21 years of age in such an order or direction shall not, in itself, be deemed to indicate a contrary intention without some further indication of a contrary intention.

"In any order or direction of a court affecting child support entered prior to the effective date of this act, a reference to minority shall be deemed a reference to the age of 21 years." (Italics added.)

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support of a minor child, the court may order either or both parents to pay any amount necessary for the support, maintenance, and education of the child." (Italics added.)

A parent may be required to support an adult child only when such child is "in need" and "unable to maintain himself by work." (§ 206.) In the instant case, there has been no finding, nor does plaintiff assert, that Deborah is "in need" and "unable to maintain herself by work."

Anticipating that the above section might cause confusion, the Legislature repealed the provision (see Stats. 1972, ch. 38, § 1) and enacted in its place section 4 of chapter 38 of the Statutes of 1972, which we set forth in the margin.[5] The provisions of section 4

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5. Section 4 of chapter 38 stated in explicit terms that "(t)he Legislature intends that any use of or reference to the words 'age of majority,' 'age of minority,' 'adult,' 'minor,' or words of similar intent in any instrument, order, transfer, or governmental communication whatsoever made in this state:

"(a) Before the effective date of Chapter 1748 of the Statutes of 1971, shall make reference to persons older or younger than 21 years of age, and

"(b) On or after the effective date of Chapter 1748 of the Statues of 1971, shall make reference to persons older or younger than 18 years of age.

"Nothing contained herein or in Chapter 1748 of the Statutes of 1971 shall prevent the amendment of any court order, will, trust, contract, transfer, or instrument to refer to the new 18-year-old age of majority where such court order, will, trust, contract, transfer, or instrument is:

"(1) In existence on the effective date of Chapter 1748 of the Statutes of 1971; and "(2) Subject to amendment by law and where amendment is allowable or not prohibited by the terms thereof;

(Fn.5 cont'd.) and

"(3) Otherwise subject to the laws of this state."

To qualify this statute for immediate effectiveness under article 4, section 8, of the California Constitution, section 3 of chapter 38 (Stats. 1972) provided as follows:

"This act is an urgency statute necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

"It has come to the attention of the Legislature since passage of A.B. 2887 (now Chapter 1748 of the Statutes of 1971) that there were and are thousands of court orders outstanding in this state referring to 'age of majority' or to the ages of 19, 20, or 21. It is now apparent that great confusion will be caused within the judicial system and among California citizens unless it is made clear that all outstanding court orders remain unamended and unaffected by Chapter 1748 of the Statutes of 1971 and to further make clear that these court orders may be amended to reflect the new age of majority where such amendment is proper in the discretion of the courts under California law or by the terms of the outstanding court orders. Likewise, it is thought prudent to expressly indicate the intention of the Legislature that any instrument outstanding on the effective date of the new law may be amended if otherwise permissible or not prohibited by the law or its own terms."

Stats. 1972, ch. 38) were added to the Civil Code (§ 25.1) by chapter 278 of the Statutes of 1973, effective January 1, 1974.[6]

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6. Section 2 of chapter 278 of the Statutes of 1973 repealed section 4 of chapter 38 of the Statutes of 1972.

Section 25.1 is substantially identical to section 4 of chapter 38 of the Statutes of 1972. Section 25.1 provides as follows: "The Legislature intends that any use of or reference to the words 'age of majority,' 'age of minority,' 'adult,' 'minor,' or words of similar intent in any instrument, order, transfer, or giernmental communication whatsoever made in this state:

"(a) Before March 4, 1972, shall make reference to persons 21 years of age and older, or younger than 21 years of age, and

"(b) On or after March 4, 1972, shall make reference to persons 18 years of age and older, or younger than 18 years of age.

"Nothing contained herein or in Chapter 1748 of the Statutes of 1971 shall prevent the amendment of any court order, will, trust, contract, transfer, or instrument to refer to the new 18-year-old age of majority where such court order, will, trust, contract, transfer, or instrument is:

"(1) In existence on March 4, 1972; and

"(2) Subject to amendment by law and where amendment is allowable or not prohibited by the terms thereof; and

To further clarify its intent, the Legislature enacted section 4704 (ch.81, § 1, Stats. 1974). Under the terms of this statute, "(a) Any order issued prior to March 4, 1972, providing for support for a child may be amended or modified by the court having jurisdiction to increase or decrease the amount of such award without terminating such award at the age of majority based on 18 years of age. (P.) (b) This section does not constitute a change in, but is declaratory of, the existing law."

These provisions make the legislative intent crystal clear. Thus, nearly all courts which have been called upon to interpret section 25.1 and its predecessors have properly held that a child support order entered prior to March 4, 1972, is not affected by the new age-of-majority legislation per se

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"(3) Otherwise subject to the laws of this state."

Although section 4 of chapter 38 (Stats. 1972) was the provision in effect at the time this case was initially decided by the trial court, we will refer to the statute whose validity is

but where subject to amendment may refer in any modification thereof to the new 18-year-old age of majority. (See In re Marriage of Crookshanks (1974) 41 Cal.App.3d 475, 479; Phillips v. Phillips (1974) 39 Cal.App.3d 723, 728[7];

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challenged as section 25.1, since the terms and operative effect of these two statutes are for all practical purposes identical.

7. In Phillips, supra, the court held that a pre-March 4, 1972 support decree, expressly providing that it was to continue until each child "shall become self-supporting, emancipated, married, deceased or reaches the age of 21 years . . .", terminated by its own terms when the child involved was emancipated upon reaching the age of 18. (39 Cal.App.3d at p. 725, italics added.) In so holding, the court distinguished a support obligation expressly made terminable upon emancipation as well as upon majority from one made terminable upon majority alone, and found that only the latter fell within the sweep of legislation continuing child support under a pre-March 4, 1972 order to age 21 or until modified. (Id. at p. 728.)

We find no basis in the language of section 25.1 or its predecessors to support the distinction drawn by the Phillips court. Furthermore, the decision contravenes the legislative intent, as expressed in the statement of

Atwell v. Atwell (1974) 39 Cal.App.3d 383, 388.[8])[9] The fact that the child has attained the age of 18 years is merely one of the factors to be considered by the court in deciding whether to increase, decrease or terminate a parent's liability under a pre-effective date order.

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urgency accompanying the enactment of section 4 of chapter 38 (Stats.1972) (see fn.5, supra) to the effect that "all outstanding court orders (are to) remain unamended and unaffected by Chapter 1748 of the Statutes of 1971 . . . (unless) amended to reflect the new age of majority where such amendment is proper in the discretion of the courts under California law or by the terms of the outstanding court orders." We therefore disapprove Phillips v. Phillips, supra, 39 Cal.App.3d 723, insofar as it is inconsistent with the views herein expressed.

8. In Atwell, supra, the court properly rejected the argument that a pre-March 4, 1972 support order modified after the effective date of the age-of-majority legislation becomes an order or decree entered after March 4, 1972, and hence automatically terminates as the child reaches the age of 18. Sections 25.1 and 4704 clearly indicate that this was not the result intended by the Legislature.

9. A number of courts in other

(Atwell v. Atwell, supra, 39 Cal.App.3d at p. 388.)

The overall result is the creation by section 25.1 of two classifications of child support obligations. One classification embraces those obligations based upon court orders entered prior to March 4, 1972, which orders may continue in effect until the child reaches the age of 21 years. The second classification embraces all those child support obligations not embodied in pre-March 4, 1972 orders, which obligations terminate when the child attains the age of 18 years. This second category includes the obligations of parents who remain married and whose support liability is based upon statute alone [redacted] 241, 242,243), as well as the obligations of parents based on court orders initially

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jurisdictions have construed similar statutory provisions in a like manner. See, for example, Vicino v. Vicino (super. Ct. Conn. 1972) 298 A.2d 241, 242-244, and Monticello v. Monticello (Ct. App. Md. 1974) 315A.2d 520, 521, 523.

entered after March 4, 1972 (§§ 4351, 4453, 4700).

In considering defendant's equal protection attack upon section 25.1, we begin by determining the appropriate test to be used by this court in judging the constitutional validity of the statute. We note that the provision neither involves a suspect class nor touches upon a fundamental right. (See, e.g., Serrano v. Priest (1971) 5 Cal.3d 584,597.) Rather, the interest of both parents affected by the legislation is a monetary one -- the parent having custody of the child seeking to enforce and continue an award for its support, the other parent obligated under a prior order to pay such support seeking to terminate his or her liability. We therefore must apply "the basic and conventional standard for reviewing economic and social welfare legislation in which there is a 'discrimination' or differentiation of treatment between classes or individuals. It manifests restraint by the judiciary in relation to the discretionary act of a co-equal branch of government; in so doing it invests legislation involving

such differentiated treatment with a presumption of constitutionality and 'requir(es) merely that distinctions drawn by a challenged statute bear some rational relationship to a conceivable legitimate state purpose.' (Citation.) . . . Moreover, the burden of demonstrating the invalidity of a classification under this standard rests squarely upon the party who assails it. (Citations.)" (D'Amico v. Board of Medical Examiners (1974) 11 Cal.3d 1, 16-17; original italics.)

Subjecting the statute here under attack to this rational relationship test, we encounter little difficulty in discerning a conceivable legitimate interest promoted by the provision. In reducing the age of majority from 21 to 18 years of age, the Legislature may well have been concerned with the effect this would have on outstanding court orders for child support entered in litigation upon the reasonable anticipation both by the parties and the court that the obligation to support would continue until the child reached 21 years of age. (See fn. 5, ante.) In other words, it

could have been reasonably considered by the Legislature that the parties and the court, contemplating such a probable terminal date, might well have taken into account this factor of a continuing liability in arriving at the amount of child support in the order and in making a corresponding adjustment in the property rights of the parties, in the award of spousal support and in any other obligation imposed by the court. Despite the absence of a formal property settlement agreement, it could reasonably be assumed that in such instances the potential duration of the obligation for child support might have affected the financial arrangements as a whole and the court's judgment carrying them out.[10]

10. This seems particularly plausible in light of the factors which a court just consider in determining the amount of a support order. These factors include: "(a) The standard of living and situation of the parties; (b) The relative wealth and income of the parties; (c) The ability of the obligee to earn; (e) The need of the obligee; (f) The age of the parties; (g) The responsibility of the obligor for the support of others." (§ 246.) (See 6 Witkin, Summary of Cal.Law (8th ed. 1974), p. 4643;

With this consideration in mind, the Legislature could reasonably have intended to protect the expectations of the parties in those cases in which child support orders had already been entered by permitting such orders to remain in effect to the same extent as if no statutory reduction in the age of majority had taken place. (Atwell v. Atwell, supra, 39 Cal.App.3d 383,388.)

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see also, In re Ricky H. (1970) 2 Cal. 3d 513, 521, and Caldwell v. Caldwell (1962) 204 Cal.App.2d 819, 821.)

On the basis of similar reasoning, the Appellate Court of Illinois determined that legislation lowering the age of majority from 21 to 18 did not affect a support decree entered prior to its effective date, even in the absence of an express statutory exemption for such orders. (Waldron v. Waldron (1973) 301 N.E.2d 167, 170-171.) In so holding, the court stated: "(I)t has long been a rule of construction in determining the meaning of judgments or decrees that one must examine the situation as it existed at the rendition of the judgment. (Citation.) The situation as it existed at the rendition of the divorce decree included a statutory provision that the age of majority for males was twenty one years. It was twenty one, and not eighteen, that was the reference point at that time for determining what was meant

Having satisfied ourselves as to this conceivable legitimate state purpose underlying section 25.1, we are convinced that the two classifications of child support obligations created by the statute on the basis of whether or not they are embodied in a court order entered prior to March 4, 1972, are entirely rational and clearly designed to effectuate the legislative objective. Where there has been no child support order before the critical date, the potential duration of the parent's liability has not influenced a formal adjustment of property and support rights and obligations. Furthermore, if an interlocutory judgment of dissolution has been entered after March 4, 1972, the parties and the court, manifestly aware of the new age of majority, have been able to give it due consideration in arriving at a just and proper adjudication of property rights and spousal and child support obligations. It is only when such an accommodation of the

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by 'minor' children." (Id.)(See also, Baker v. Baker (Wash. 1972) 498 P.2d 315,319.)

various property and support interests at stake in the divorce or dissolution proceedings has taken place prior to March 4, 1972, that the legitimate purpose of section 25.1 is furthered by allowing a parent's support liability to continue until the former age of majority.

Therefore, the classification created by section 25.1 is rational "'in the nature of the class singled out' (citations)," "'"rest(s) upon some ground of differences having a fair and substantial relation to the object of the legislation . . ." ' (citations)" (italics omitted), and insures that " ' persons similarly situated with respect to the legitimate purpose of the law receive like treatment.' (citations.)" (Brown v. Merlo (1973) 8 Cal.3d 855,861.)

Defendant fails to persuade us to the contrary. His principal contention is that in lowering the age of majority to 18 years and in making this change applicable to most child support obligations, the Legislature determined that as a general rule, a child becomes capable of self-support upon attaining the

age of 18. Accordingly he argues that all parents and children are similarly situated with respect to the legislative purpose underlying the modified support statutes and therefore must receive like treatment.

We find defendant's equal protection analysis faulty in several respects. In the instant case, we are called upon to determine the constitutional validity of section 25.1, the statute which singles out one group of parents and children for special treatment. It is true that we "must judge the enactment's operation against the background of other legislative, administrative and judicial directives which govern the legal rights of simiarly situated persons" (Brown v. Merlo, supra,8 Cal.3d at p.862), since in this manner we are able to discern what classifications are imposed by the legislation under attack. However, having identified the different treatment complained of, we are required to determine whether there is a conceivable legitimate state interest underlying the particular statute in question and to decide whether the classifications

created are rationally related to the furtherance of such interest.

As we have explained, we have concluded that there is a rational basis for distinguishing pre-March 4, 1972 child support orders from other child support obligations and for permitting such orders to continue in effect, unless otherwise modified, until the child reaches the age of 21 years. The fact that in a particular case the child is able to support himself or herself fully or partially upon attaining the age of 18 years, may justify a modification or termination of the support order. But the statutory reduction of the age of majority does not ipso facto warrant the same result.

Nor is there any merit in defendant's argument that section 25.1 must be struck down because the beneficiaries of child support orders entered before March 4, 1972, have no vested rights in them. The argument seems to be launched from our opinion in Rosher v. Superior Court (1937) 9 Cal.2d 556, in which we held that legislation raising the age of majority for females

from 18 to 21 years could be properly applied to extend the child support obligation of a father under a decree of divorce entered prior to the effective date of such legislation. In so holding, we rejected the father's claim that a support order is "a judgment in the sense of its being a final adjudication of the rights and duties of the parent and the minor child." (Id. at p. 559.) Noting that such orders are subject to judicial modification and are made "in the light of the power of the state to change the period of minority" (Id. at p. 560), this court held that no "vested right with regard to his duty to support or care for his minor children is acquired by a divorced parent as a result of the divorce decree or custody orders made in connection therewith." (Id.)

Thus, under the rationale of Rosher, it may be argued that the enactment of section 25.1 was not compelled by federal or state constitutional proscriptions against either the impairment of contractual obligations (U.S. Const., art. 1, § 10; Cal.Const., art. 1 § 9), or against the deprivation of vested

property interests without due process of law. (U.S. Const., 14th Amend.; Cal. Const., art. I, §§ 7, 15.) It was constitutionally permissible to reduce the age of majority from 21 to 18 years and to make the reduction effective as to pre-existing child support orders. But contrary to defendant's claim, it does not follow that merely because the protection afforded by the Legislature of the expectations of the parties in pre-March 4, 1972 child support orders is not constitutionally required, such protection is constitutionally prohibited. Rosher does not consider the latter issue, and defendant's reliance on it for that point is entirely misplaced.

To recapitulate, we hold that since section 25.1 promotes a legitimate state interest and since the classifications created by this provision are rationally related to the furtherance of this interest, the statute satisfies the equal protection requirements of the Fourteenth Amendment to the United States Constitution and of article I,

section 7, of the California Constitution.

The order is affirmed.

SULLIVAN, J.

WE CONCUR:

WRIGHT, C.J.
MCCOMB, J.
TOBRINER, J.
MOSK, J.
CLARK, J.
RICHARDSON, J.

C O P Y

APPENDIX A

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA
IN BANK

MARIE D. GANSCHOW, Plaintiff and Respondent, v. MARTIN E. GANSCHOW, Defendant and Appellant	S.F. 23231 Super.Ct. No. P 11881

MODIFICATION OF OPINION

BY THE COURT:

The opinion herein, appearing at 14 Cal.3d 150, is modified as follows: On page 158, line 19, delete the words "having custody of the child" and substitute therefor the following words: "entitled to receive the payments on the child's behalf."

APPENDIX B

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT
DIVISION ONE

MARIE D. GANSCHOW Plaintiff and Respondent vs. MARTIN E. GANSCHOW, Defendant and Appellant	1 Civil 32422 Superior Ct. No. P 11881

The question presented is whether a parent is denied the equal protection of the law when he must support a child until he or she reaches the age of 21 years pursuant to a divorce decree rendered when the age of majority was 21 years in view of the statutory change of the age of majority to 18 years.

The child in the instant case became 18 years of age prior to March 4, 1972, the effective date of the statute which changed the age of majority from 21 to 18. (Stats. 1971, ch. 1748.) Section 73 of said statutes, in pertinent

part, provided: "In any order or direction of a court entered before the operative date of this act, except orders or directions of a court affecting child support, and in the absence of any indication of an intention to the contrary, a reference to the age of majority or the age of 19 years of age, 20 years of age, or 21 years of age shall be deemed a reference to 18 years of age. . . .(P) In any order or direction of a court affecting child support entered prior to the effective date of this act, a reference to mino(r)i(t)y shall be deemed a reference to the age of 21 years."

Section 73 remained in effect only 24 days. It was repealed, effective March 28, 1972, by chapter 38 of the Statutes of 1972. In the statement of urgency it was stated as follows:

"It has come to the attention of the Legislature since passage of A.B. 2887 (now Chapter 1748 of the Statutes of 1971) that there were and are thousands of court orders outstanding in this state referring to 'age of majority' or to the ages of 19, 20, or 21. It is now apparent that great confusion will be caused

within the judicial system and among California citizens unless it is made clear that all outstanding court orders remain unamended and unaffected by Chapter 1748 of the Statutes of 1971 and to further make clear that these court orders may be amended to reflect the new age of majority where such amendment is proper in the discretion of the courts under California law or by the terms of the outstanding court orders. . ."

Section 4 of said urgency measure (Stats. 1972, ch. 38), effective March 28, 1972, provides: "The Legislature intends that any use of or reference to the words 'age of majority,' 'age of minority,' 'adult,' 'minor,' or words of similar intent in any instrument, order, transfer, or governmental communication whatsoever made in this state: (P)(a) Before the effective date of Chapter 1748 of the Statutes of 1971, shall make reference to persons older or younger than 21 years of age, and (P)(b) On and after the effective date of Chapter 1748 of the Statutes of 1971, shall make reference to persons older or younger than 18 years of age. (P) Nothing contained

herein or in Chapter 1748 of the Statutes of 1971 shall prevent the amendment of any court order, will, trust, contract, transfer, or instrument to refer to the new 18-year-old age of majority where such court order, will, trust, contract, transfer, or instrument is: (P) (1) In existence on the effective date of Chapter 1748 of the Statutes of 1971; and (P) (2) Subject to amendment by law and where amendment is allowable or not prohibited by the terms thereof; and (P) (3) Otherwise subject to the laws of this state."

The provisions of section 4 of chapter 38 of the Statutes of 1972 were added to the Civil Code (§ 25.1) by chapter 278 of the Statutes of 1973, effective January 1, 1974.[1]

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1 - Civil Code section 25.1 reads substantially the same as section 4 of chapter 38 of the Statutes of 1972. In subdivision(a) the words "Before March 4, 1972" have been substituted in place of the phrase "Before the effective date of Chapter 1748 of the Statutes of 1971." In subdivision (b) the date "March 4, 1972" has been substituted in place of the phrase "the effective date of Chapter 1748 of the Statutes of 1971." In subdivision (1) the date "March 4, 1972" has been substituted in lieu of the phrase "on the effective date of Chapter 1748 of the Statutes of 1971."

In the present case the husband had been ordered by an interlocutory judgment of divorce entered on January 23, 1967, to pay $100 per month per child for children's support to continue until their respective majorities unless sooner married or self-supporting. When the child Deborah attained 18 years of age the husband ceased making support payments for her. The order herein appealed from, made on July 17, 1972, pursuant to an order to show cause why he should not continue to make such payments, modified the decree to provide for support for Deborah in the sum of $100 per month, commencing September 1972 and continuing through and including May 1973 provided she remained in college during said period.

Adverting to the equal protection issue we first observe that Civil Code section 242[2] imposes the duty upon every man to support his child. Prior to

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2-Unless otherwise indicated all statutory references hereinafter made are to the Civil Code.

March 4, 1972, subdivision (d) of section 241 provided, in relevant part, that " ' Child' means a son or daughter under the age of 21 years and a son or daughter of whatever age who is incapacitated from earning a living and without sufficient means." Pursuant to chapter 1748 of the Statutes of 1971, effective March 4, 1972, subdivision (d) of section 241 was amended by the substitution of the phrase "18 years" for 21 years in the definition "child." There is no contention made in the present case that Deborah is "incapacitated from earning a living and without sufficient means."

The term "equal protection of the laws" has been judicially defined to mean that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in like circumstances in their lives, liberty, and property and in their pursuit of happiness. (Kentucky Co. v. Paramount Exch., 262 U.S. 544, 550; Truax v. Corrigan, 257 U.S. 312, 336-338; Gray v. Whitmore, 17 Cal.App.3d 1, 21.) "The concept of

the equal protection of the laws compels recognition of the proposition that persons similarly situated with respect to the legitimate purpose of the law receive like treatment." (Purdy & Fitzpatrick v. State of California, 71 Cal. 2d 566, 578.) This concept, however, does not require absolute equality or that a statute necessarily apply equally to all persons; rather it permits a state to provide for differences as long as the result does not amount to invidious discrimination. (Douglas v. California, 372 U.S. 353, 357; In re Antazo, 3 Cal.3d 100, 110; Gray v. Whitmore, supra, at pp. 21-22.) Classification, when constitutionally permitted, must have a rational basis. (In re Eugene W., 29 Cal.App.3d 623, 627.)

It is clear that the legislative intent was to reduce the age of majority from 21 years to 18 years and to require a man to support his son or daughter, who is not incapacitated, until he or she reached the age of 18 years. In doing so the Legislature determined in its wisdom that in the light of contemporary standards an able-bodied male or female

who reaches the age of 18 years has the intelligence, experience, and capability of self-support and is entitled to be emancipated from the authority and control of its parents. It has long been the law of this state that the authority of a parent over a child ceases upon its attaining majority. (§ 204.) Accordingly, in the absence of an agreement to the contrary a parent is released from the legal duty of support upon a complete emancipation of a minor child. (Kamper v. Waldon (1941) 17 Cal.2d 718, 720; see Argonaut Ins. Exchange v. Kates (1955) 137 Cal.App.2d 158, 166.)

Under the provisions of section 25.1, different treatment will be afforded persons in the same categories. Needy children 18 years of age and over whose parents obtain a dissolution after March 4, 1972, are not entitled to support; however, needy children 18 years of age and over for whom a support order was entered prior to March 4, 1972, would be entitled to contued support at the lower court's discretion. Section 25.1 not only treats children in the

same category differently, it classifies parents in the same category differently. A father who was ordered to support his child by an order made prior to March 4, 1972, must do so until the child is 21 years of age, while a father who was ordered to support his child on or after March 4, 1972, must do so only until the child reaches 18 years of age. We perceive these classifications as between the parents in the two classifications and as between the children who fall into the respective classifications to amount to an invidious discrimination. These classifications have no rational basis in the light of the legitimate purposes of the statutes which declare that a minor is a person under 18 years of age (§ 25) and, that except where there is a use or reference of the words "age of majority," "adult," "minor" or words of similar intent in any instrument, order, transfer or governmental communication made in this state prior to March 4, 1972, the statute has "reference to persons 18 years of age and older, or younger than 18 years of age."

(§ 25.1)

We perceive another incongruity which points to invidious discrimination. Where there is no instrument, order, transfer or governmental communication using or referring to the terms "age of majority" or "minor" these terms have reference to a person who has reached 18 years of age or is under 18 years of age, respectively, without regard to whether this status occurred prior to or after March 4, 1972. Accordingly, where there is an order of support made prior to March 4, 1972, a child can, under existing statutes, be emancipated from the control of his parents but his father will, nevertheless, be obligated to support the son or daughter until he or she reaches 21 years of age. On the other hand, where there is no such order in existence which makes the references specified in section 25.1, there will be no obligation on the part of the father to support such child when he or she reaches 18 years of age, the age of majority and the date on which the child would be freed from parental authority. (See Phillips v. Phillips, 39

Cal. App.3d 723, 725-728.)

The wife contends that since the order for child support is subject to modification any constitutional infirmity is obviated. This contention appears to find support in Atwell v. Atwell, 39 Cal. App.3d 383,[3] where it was held that an amendment or modification sought after the date of the lowering of the age of majority does not automatically terminate child support for a child then over 18 years of age upon the rationale that the language of the enactment, referring to amendment of orders, merely made it clear that traditional law which for many years permitted the modification of child support orders was not affected by the new legislation. (Pp. 387-388.)

In a subsequent decision by the same court, Lungstrom v. Lungstrom, 41 Cal.App.3d 158, Atwell was recognized as holding that the purport of the 1972 legislation was to allow pre-1972 child support to continue unabated until the former age of majority,

3 - A hearing by the Supreme Court was denied.

unless and until a court, after a hearing and for good cause expressly determined that the child involved no longer required parental support. Lungstrom holds, however, that the determination made in Atwell applies only where the court seeks to continue or reduce support payments prior to March 4, 1972, but does not apply where it is sought to increase the support payments ordered prior to March 4, 1972. (At pp. 160-161.)

Atwell concluded that since section 25.1 specifically provides that the father can seek an amendment by asking the court to refer to the new age of majority there can be no complaint that the Constitution forbids a distinction between fathers who have support orders made before and after March 4, 1972. (At p. 388.) The reviewing court was specifically referring to the following language in section 25.1: "Nothing contained herein or in Chapter 1748 of the Statutes of 1971 shall prevent the amendment of any court order, will, trust, contract, transfer, or instrument

to refer to the new 18-year-old age of majority where such court order, will, trust, contract, transfer, or instrument is : (1) In existence on March 4, 1972; . . ." (Emphases added.) We are hard put to interpret the legislative intent of this provision and in particular what is meant by an amendment of the specified documents or instruments "to refer" to the new 18-year-old age of majority.

Our interpretation of this provision is that upon a petition for modification of an order existing on March 4, 1972, and providing for child support until the child reaches 21 years of age the court can take into consideration the new age of majority as a circumstance in determining whether the support provision in the order ought to be modified or amended. Atwell appears to hold that in each instance the court has the discretion to invoke the new rule of majority when it states, "The court can examine each case on its own facts and decide whether to invoke the new rule of majority or not, based on rational distinctions." (39 Cal.App. 3d at p. 388.) As we have concluded

there is no rational basis for any distinction and, accordingly, when courts undertake to invoke the new age of majority under one set of facts and not under another set of facts the discrimination which the distinction begets is compounded.

Atwell disposes of the "constitutional violation" argument with the statement that "There is no constitutional violation where the distinctions and classifications are reasonable and fair." (39 Cal.App.3d at p. 388.) This statement is made in conjunction with the observation that rational distinctions can be made on a case-by-case basis between fathers who have support orders made before and after March 4, 1972, when the father seeks an amendment of the order. We do not perceive that Atwell purports to treat the equal protection of the laws argument in the context in which it has been presented to us.

The order appealed from is reversed with a direction to the trial court that it enter its order that the husband has

no obligation to support Deborah by virtue of the provisions of the interlocutory and final judgments of divorce.

CERTIFIED FOR PUBLICATION

_____
Molinari, P.J.

WE CONCUR:

_____
Sims, J.

_____
Elkington, J.

APPENDIX C

SUPERIOR COURT OF THE STATE
OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

MARIA D. GANSCHOW)
Plaintiff)
) NO. P11881
MARTIN E. GANSCHOW)
Defendant)

FINAL JUDGMENT OF DIVORCE

The motion of the plaintiff for a final judgment of divorce herein came on regularly to be heard this day. It appears to the court, and the court finds that in this action defendant was served with Summons and Complaint on September 21, 1966, that an interlocutory judgment was entered on January 23, 1967 adjudging that plaintiff was entitled to a divorce from defendant, that more than one year has expired from the date of such summons and complaint and that no appeal has been taken from said judgment, and no motion for a new trial has been granted and the action has not

been dismissed.

IT IS ADJUSTED that plaintiff is granted a final judgment of divorce from defendant on the ground of defendant's extreme cruelty and the parties hereto are restored to the status of single persons and either of them is permitted to marry after the entry of this final judgment of divorce.

That defendant shall pay to plaintiff the sum of $100.00 per month for support of each child, per month.

That defendant shall pay to plaintiff the sum of $50.00 per month for her alimony and support.

That defendant shall maintain, pay the premiums for, and designate the children of the parties as the irrevocable beneficiaries of certain insurance policies on life of defendant.

That the terms of the Interlocutory Judgment of Divorce are incorporated herein as though set forth in full.

Dated: October 3, 1967

J. E. Longinotti
Judge

APPENDIX D

SUPERIOR COURT OF THE STATE

OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

In re the Marriage of	)	
Petitioner: MARIA D. GANSCHOW	)	NO.
and	)	P11881
Respondent: MARTIN E. GANSCHOW	)	

ORDER AFTER ORDER TO SHOW CAUSE RE CONTEMPT

The pending proceeding re contempt came on regularly for hearing by the Court this date; petitioner appeared by counsel Richard M. McGowen, respondent appeared by counsel Fred W. Armstrong. The Court having previously determined the constitutionality of Chapter 38, Section 4, Laws of 1972 insofar as it pertains to child support for minors that were 18 years of age prior to March 4, 1972, and the subject of support orders of the Court, and the Court having discretion to modify any such orders, and

Whereas, the interlocutory and final judgments of divorce herein provided that respondent pay the sum of $100.00 each

month for child support of the subject minor until the child's majority, unless sooner married or self-supporting, or until further order of the Court;

Upon proof made to the satisfaction of the Court, the Court finds that all of the allegations of the supporting declaration of petitioner are true; that the sum of $490.00 is delinquent under the Court's previous order, however, respondent is not in contempt therefor, and that the previous order should be amended. Therefore, it is

ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Respondent Martin E. Ganschow is not in contempt of Court for failure to pay child support;
2. That the arrearages in child support in the sum of $490.00 through July 1972 are ordered to be paid over to petitioner by respondent forthwith;
3. That the interlocutory and final decrees of divorce are modified and amended insofar as they relate to Debbie

Ganschow, as follows: respondent is ordered to pay the sum of $100.00 per month commencing September 1972, and continuing each and every month thereafter to and including the month of May 1973, provided Debbie Ganschow remains in college during said period of time. Commencing June 1973 respondent's obligation for child support shall terminate.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED: that petitioner has waived any and all rights for reimbursement for medical expenses paid by her and not reimbursed by medical insurance to the date of this Order. Respondent is ordered to submit all of such expenses to his own insurance company at his place of employment and if payment is made therefor, all such sums are to be paid over to petitioner.

IT IS FURTHER ORDERED, ADJUDGED

AND DECREED: that respondent pay to RICHARD M. McGOWEN the sum of $100.00 as and for attorney's fees.

Stanley R. Evans
Judge of the Superior Court

Dated: Jul. 17, 1972

Approved as to form:

Fred W. Armstrong
Attorney for Respondent

APPENDIX E

IN THE SUPREME COURT

STATE OF CALIFORNIA

MARIE D. GANSCHOW Plaintiff and Respondent v. MARTIN E. GANSCHOW Defendant and Appellant	))))S.F. 23231))Super. Ct.)No. P11881)

PETITION FOR REHEARING BY DEFENDANT AND APPELLANT

TO DONALD R. WRIGHT, CHIEF JUSTICE, AND TO THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA, MARTIN E. GANSCHOW PETITIONS FOR REHEARING TO CONSIDER THE DECISION FILED BY THIS COURT MAY 5, 1975.

I

THE DECISION OVERLOOKS THE RECIPROCITY EXISTING BETWEEN THE DUTY TO SUPPORT AND THE RIGHT TO EARNINGS AND CUSTODY

Many factors, as noted in the decision, would be considered by a court in making its interlocutory judgment prior to March 4, 1972. Included in those factors would be the parents' right to custody of the child to age 21. But that

factor was destroyed by Ch.1748, Stats. 1971 changing the age of custody to 18. This age of custody factor also changed the outlook in the non-divorced family.

> "The rights and duties or obligations arising from the relation of parent and child are reciprocal."
>
> 67 Corpus Juris Second 629.
>
> "An anomalous situation would be created were an emancipated child under no obligation to conform his life to the wishes of either parent but could impose upon a parent a legal obligation to support him."
>
> Ruhsam v. Ruhsam (Ariz.) 515 P 2d 1199,1203.

In Garey v. Garey (Tenn.) 482 SW 2d 133, the court noted that when the legislature lowers the age of majority it completely emancipates the child from the control of its parents and the parents are therefore relieved of the legal duty of support even where the age 21 is written into the property settlement agreement.

In King v. Sanchez (La.) 273 So.2d 45, it was held that when the age dropped the mother could no longer complain

because when minority ends, the custody order itself ends. The appeal was dismissed as moot, the age change having occurred during the appeal time.

In Price v. Price (Mich.) 215 NW 2d 756, the divorced father of a 20 year old son could not be ordered to assist in the son's college education because of the new 18 year old legislation.

The Supreme Court of Arizona in Ruhsam, supra, stated that the personal privilege of infancy is not vested right nor is there a vested right in a support order, borrowing from Rosher v. Superior Court, 9 Cal.2d 556 and considering many cases under the new 18 year old laws.

It did note that Washington and Connecticut had different rules. In Washington the divorce judgment is a vested right. In Connecticut the support order is a substantive right.

Sproston v. Sproston, (Wash.) 505 P. 2d 479, 481;
Vicino v. Vicino, (Conn.) 298 Atl. 2d 241.

Vicino, supra, relies in part on legislative records and in the case at bench, the Court has the benefit of a

letter from the State Legislator Alister McAlister.

LEGISLATURE INTENDED TO DESTROY RIGHT TO EARNINGS AND CUSTODY

Sec. 73, Ch. 1748, Stats. 1971 provided that reference to ages 19, 20 or 21 in court orders should be deemed a reference to age 18 except orders affecting child support. This intent re child support was finally added to the Civil Code as section 4704. No comparable provisions are found in Civil Code sections 204, 4359 or 4600.

Thus we must conclude that custody ended March 4, 1972 and the case becomes moot. King v. Sanchez (La.) 273 So. 2d 45.

WHERE PARENT DOES NOT HAVE RIGHT TO CUSTODY AND EARNINGS DUTY TO SUPPORT MUST END

In Hoeper v. Tax Commission, 284 U. S. 206, 52 S. Ct. 120, 76 L. Ed. 248, 78 ALR 346, the legislative history presented to the United States Supreme Court revealed that the Wisconsin Legislature had repealed the old common law doctrine that gave all of a woman's

property to her husband upon consummation of the marriage. The legislature instead decreed that the property of the woman prior to marriage remained her separate property. But the legislature wanted the old rule for tax purposes. It wanted the husband to include in his income the income from the wife's separate property. The Supreme Court felt this was a violation of the equal protection clause. Had the common law rule prevailed, the result for Wisconsin would have permitted the inclusion of the income from all the property.

Likewise, in the case at bench. So long as the right of custody, to the earnings, to sue for damages resulting in a loss of earnings is in the parent, so long would there be no equal protection argument in this narrow field. But the legislature very pointedly destroyed the reciprical character of parent and child so that legally they are strangers after 18.

The person of 18 years has been given all the rights of an adult plus,

in a limited group of cases, the additional right to support by another adult.

CONCLUSION

The social atmosphere and distress which produced, almost nation wide, the 18 year old bundle of rights, will be remembered as one where the young people demanded their liberation. Under the pressures then existing, with which society seemed unable to cope, the legislatures were quick to give them the rights of adults. Now parents contend over whether the liberation was given but the legislature has spoken-the 18 year old has the full standing of the adult.

In so acting the state took from the parent all control over the child including the asset of earning ability of the child. This is akin to the state taking property for freeways and then forcing the condemnees to build the road.

The decision here upholds the taking of a property right without compensation. The State of Wisconsin first

removed the wife's property from Mr. Hoeper and then sought to tax him on the income from that property. The equal protection clause was violated.

RESPECTFULLY SUBMITTED,

N. PERRY MOERDYKE, JR.

By: Fred W. Armstrong
Attorneys for Appellant

APPENDIX F

1 Civil No.
S.F. 23231

IN THE SUPREME COURT
STATE OF CALIFORNIA

MARIE D. GANSCHOW)
Plaintiff and Respondent,)
v.) No.S.F.23231
MARTIN E. GANSCHOW)
Defendant and Appellant.)

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that MARTIN E. GANSCHOW, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of California, affirming the order entered in this action July 17, 1972.

This appeal is taken pursuant to 28 U.S.C. Section 1257(2).

FRED W. ARMSTRONG
Attorney for Appellant

APPENDIX G

IN THE SUPERIOR COURT OF THE STATE
OF CALIFORNIA
IN AND FOR
THE COUNTY OF SANTA CLARA

MARIE D. GANSCHOW Plaintiff and Respondent	)	
v.	)	No. P-11881
MARTIN E. GANSCHOW Defendant and Appellant	)	

NOTICE OF APPEAL TO THE SUPREME
COURT OF THE UNITED STATES

Notice is hereby given that MARTIN E. GANSCHOW, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of California, affirming the order entered in this action July 17, 1972.

This appeal is taken pursuant to 28 U.S.C. Section 1257(2).

FRED W. ARMSTRONG,
Attorney for Appellant

APPENDIX H

CONSTITUTION OF THE UNITED STATES

AMENDMENT XIV.

Section 1.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

APPENDIX I

CALIFORNIA CIVIL CODES

Section 23, Ch. 1748, Stats. 1971:

"Minors are all persons under. . .18 years of age . . . .

Section 73, Ch. 1748, Stats. 1971:

"In any order or direction of a court entered before the operative date of this act, except orders or directions of a court affecting child support, and in the absence of any indication of an intention to the contrary, a reference to the age of majority or the age of 19 years of age, 20 years of age, or 21 years of age shall be deemed to be a reference to 18 years of age.

"The use of the words the age of majority, 19 years of age, 20 years of age, or 21 years of age in such an order or direction shall not, in itself, be deemed to indicate a contrary intention without some further indication of a contrary intention.

"In any order or direction of a court affecting child support entered prior to the effective date of this act, a reference to minority shall be deemed a reference to the age of 21 years.

"Nothing in this section or this act shall prevent the entering of an adoption order under Chapter 2 (commencing with Section 221) of Title 1

of Part 1 of the Civil Code in respect to a person who has attained the age of 18 years, if the application for such order was made before the operative date of this act, and in such case, that chapter shall prevail over this act."

Section 77, Ch. 1748, Stats. 1971:

"Sec. 77. Where, on the operative date of this act, a person has (a) attained the age of 18 years but not 21 years, and (b) a right of action in respect to which the period of limitation applicable to the bringing of such action would have commenced running on his attainment of 21 years of age had this act not been enacted, the period of limitation in respect to such action shall commence running on the operative date of this act."

APPENDIX J

MAJORITY OF COURTS

Ruhsam v. Ruhsam, 21 Ariz. App. 101,515 Pac.2d 1199 (1973)

Rosher v. Superior Court, 9 Cal.2d 556, 71 P. 2d 918 (1937)

Jungjohann v. Jungjohann, 213 Kan. 329, 516 P. 2d 904 (1973)

Young v. Young (Ky.) 413 SW 2d 887 (1967)

Showalter v. Showalter (Ky.) 497 SW 2d 420 (1973)

Fellow v. Fellow (La.) 267 So.2d 572 (1973)

Price v. Price 51 Mich.App.656, 215 NW 2d 756 (1974)

Mason v. Mason 84 N.M. 720,507 P 2d 781 (1973)

Phelps v. Phelps 85 N.M. 62, 509 P. 2d 254 (1973) Relies on Rosher,Supra.

Shoaf v. Shoaf 282 N. Car. 287, 192 SE 2d 299 (1972) Neither parent or infant have vested right in earlier order.

Istnick v. Istnick, 37 Oh.Misc.91, 307 NE 2d 922 (1973)

Weinstein v. Heimburg (Tenn.) 490 SW 2d 692 (1972)

Garey v. Garey,(Tenn.)482 SW 2d 133 (1972)
To same effect where tolling of limitations affected by change of majority

Feest v. Allis Chalmers Corp.(Wis.)229 NW 2d 651 (1975)(No person has vested right in remaining a minor to age 21.

APPENDIX K

LETTERHEAD

ASSEMBLY

CALIFORNIA LEGISLATURE
Alister McAlister, Assemblyman

Twenty-Fifth District

November 19, 1974

Honorable Justices of the Supreme Court
of the State of California
350 McAllister Street, Room 4050
San Francisco, California 94102

Re: Mari(e) D. Ganschow vs. Martin E. Ganschow, 1 Civil 32422, Division One(Sup.Ct. No.P11881)

Gentlemen:

I am writing to lend my support to the Petition For Hearing of respondent Mari(e) D. Ganschow.

I have been a Member of the California Legislature since January, 1971. Throughout all of my legislative service I have also been the Vice-Chairman of the Assembly Judiciary Committee, and have maintained an active interest in the legislation reducing the age of majority from 21 to 18 years.

I would support the Petition For Hearing for all of the reasons cited by

respondent Mari(e) D. Ganschow. I would point out that the Legislature clearly intended to allow support until age 21 for a child who received a Child Support Order prior to March 4, 1972, the effective date of the legislation reducing the age of majority to 18. The exemption of pre-existing Orders was, in fact, a crucial issue in the legislative deliberations and debates over this matter in 1971. It may, in fact, be seriously questioned whether the Legislature would have voted to reduce the age of majority from 21 to 18 without the exemption for pre-existing Orders.

While the Court of Appeal in the Ganschow case has held that the equal protection clause of the Fourteenth Amendment of the United States Constitution is violated by the exemption for pre-existing Orders, this ruling seems to ignore other compelling constitutional arguments to the contrary. In fact, at the time of the adoption of the 1971 legislation reducing the age

of majority to 18, it was commonly believed by Legislators that the constitution required an exemption for pre-existing Orders. It was felt that without such an exemption, the reduction of the age of majority to 18 would have constituted an invalid impairment of the obligation of a contract, forbidden by the United States Constitution, and that it would have constituted the unconstitutional deprivation of a vested property right, namely the right to support. In the 1973-74 legislative session, the Assembly Judiciary Committee rejected Assemblyman Kapiloff's AB 2047, which would have cut off the right to support even under the pre-existing Orders at age 18, based in part on the belief that an exemption for pre-existing Orders is constitutionally required.

Additionally, respondent Mari(e) D. Ganschow has made a valid point that there is conflict in the decisions of the respective District Courts of Appeal. On an issue of such universal concern, such a conflict ought to be

resolved by your Court.

Thank you for your consideration of this matter.

Sincerely yours,

ALISTER McALISTER

AM:ia
cc: Mr. Fred Armstrong
Mr. Richard M. McGowen
Mr. Herbert W. Nobriga